

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

FEDERAL HOUSING FINANCE AGENCY, in  
its capacity as Conservator for the Federal  
National Mortgage Association, and FEDERAL  
NATIONAL MORTGAGE ASSOCIATION,

Petitioners,

vs.

EIGHTH JUDICIAL DISTRICT COURT, Clark  
County, Nevada, and THE HONORABLE  
MARK DENTON, Judge

Respondents,

WESTLAND LIBERTY VILLAGE, LLC;  
WESTLAND VILLAGE SQUARE, LLC;  
AMUSEMENT INDUSTRY, INC.;  
WESTLAND CORONA LLC; WESTLAND  
AMBER RIDGE LLC; WESTLAND  
HACIENDA HILLS LLC; 1097 NORTH  
STATE, LLC; WESTLAND TROPICANA  
ROYALE LLC; VELLAGIO APTS OF  
WESTLAND LLC; THE ALEVY FAMILY  
PROTECTION TRUST; WESTLAND AMT,  
LLC; AFT INDUSTRY NV, LLC; and A&D  
DYNASTY TRUST,

Real Parties in Interest.

Case No. — Electronically Filed  
Apr 18 2022 10:07 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**PETITIONERS FEDERAL HOUSING FINANCE AGENCY AND  
FEDERAL NATIONAL MORTGAGE ASSOCIATION'S APPENDIX  
VOLUME III OF III**

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**PETITIONERS' APPENDIX ALPHABETICAL INDEX**

<b>Document Description</b>	<b>Date</b>	<b>Vol.</b>	<b>Page Nos.</b>
Answer to Plaintiff's Complaint, Counterclaim and Third Party Complaint	8/31/2020	I	0060 - 0137
Application for Appointment of Receiver on Order Shortening Time	8/12/2020	I	0001 - 0046
First Amended Answer and First Amended Counterclaim	8/26/2021	I-II	0138 - 0276
Minute Order	12/22/2021	III	0509 - 0510
Notice of Entry of Order Denying in Part and Granting in Part Defendants' First Amended Answer and Amended Counterclaim	3/17/2022	III	0518 - 0526
Opposition to Plaintiffs' Partial Motion to Dismiss Defendant's First Amended Answer and Amended Counterclaim	11/23/2021	II	0298 - 0478
Order Denying in Part and Granting in Part Motion to Dismiss in Part Defendants' First Amended Answer and Amended Counterclaim	3/17/2022	III	0511 - 0517
Plaintiff and FHFA's Motion to Dismiss in Part Defendants' First Amended Answer and Amended Counterclaim	10/29/2021	II	0277 - 0297
Plaintiff and FHFA's Reply in Support of Motion to Dismiss in Part Defendants' First Amended Answer and Amended Counterclaim	12/9/2021	II-III	0479 - 0508
Verified Complaint	8/12/2020	I	0047-0059

1 under those agreements. *Id.* The Opposition did not even respond to, let alone refute, this  
2 argument. *See* EDCR 2.20(e) (failure to oppose may be construed as an admission that the motion  
3 is meritorious and a consent to granting the same). Instead, Counterclaimants assert that they are  
4 entitled to and have pled recovery of their attorneys' fees as "special damages." Relying primarily  
5 on *Sandy Valley Assocs. v. Sky Ranch Ests. Owners Ass'n*, 117 Nev. 948, 955–57 (2001), which  
6 has been substantially overruled, Counterclaimants argue that "attorney's fees can be recovered as  
7 an element of consequential damage and may be plead when foreseeably arising out of breach of  
8 contract or tortious conduct as special damages." *Opp.* at 15. They are not, however, entitled to  
9 such fees, because they did not and cannot establish that any of the "narrow and limited exceptions"  
10 apply, nor did they plead fees as special damages appropriately.

11 Nevada "adheres to the American Rule of attorney fees," which is that fees may only be  
12 awarded when authorized by statute, rule, or contract. *Pardee Homes*, 135 Nev. at 177. "As an  
13 exception to the general rule," attorney fees may be awarded "as special damages in limited  
14 circumstances." *Liu v. Christopher Homes, LLC*, 130 Nev. 147, 151 (2014) (quoting *Horgan v.*  
15 *Felton*, 123 Nev. 577, 583 (2007)). For example, attorney fees may be an element of damage in  
16 cases when a plaintiff becomes involved in a "third-party legal dispute as a result of a breach of  
17 contract and the fees incurred in *defending* ... the third-party action could be damages in the  
18 proceeding between the plaintiff and the defendant [who breached the contract]." *Id.*, 130 Nev. at  
19 152. Likewise, attorney fees may be awarded as damages in limited cases in which a party incurred  
20 the fees in clarifying or removing a cloud upon the title to property." *Id.* Neither applies here, nor  
21 have Counterclaimants identified any legitimate basis to seek fees as special damages.

22 Primarily relying on *Sandy Valley*, Counterclaimants broadly assert that they are entitled to  
23 fees as special damages because they are the result of Fannie Mae's injurious conduct, that they are  
24 related to third-party actions, and that they are incurred to remove a cloud upon title.  
25 Counterclaimants' reliance on *Sandy Valley*, which has been substantially overruled and abrogated,  
26 is misplaced and cannot support their claim for fees as special damages. First, the Nevada Supreme  
27 Court has expressly rejected Counterclaimants' reading of that decision, holding that "to the extent  
28 *Sandy Valley* has been read to broadly allow attorney fees as special damages whenever the fees

1 were a reasonably foreseeable consequence of injurious conduct, we disavow such a reading.”  
2 *Pardee Homes*, 135 Nev. at 177 (emphasis added). Further, the Court clarified that *Sandy Valley*  
3 does “not support an award of attorney fees as special damages where a plaintiff merely seeks to  
4 recover fees incurred for prosecuting a breach-of-contract action against a breaching defendant.”  
5 *Id.* (emphasis added) (citing *Liu*, 130 Nev. at 155 n.2 (observing *Sandy Valley* did not permit a  
6 plaintiff to recover attorney fees as special damages in a suit for breach of contract)). Yet, that is  
7 exactly what Counterclaimants urge in their Opposition. Moreover, Counterclaimants fail even to  
8 acknowledge the Nevada Supreme Court’s clear rejection of their position in *Pardee Homes*.<sup>16</sup>

9 Second, Counterclaimants are not defendants in a third-party action that could support an  
10 award of fees as special damages. A party to a contract may recover, as special damages, the  
11 attorney fees that arise from another party’s breach of the contract when the breach causes the  
12 former party to incur attorney fees in a legal dispute brought by a third party. *Liu*, 130 Nev. at 155.  
13 But Counterclaimants are defendants in a breach of contract action, and counter-plaintiffs as to  
14 other claims—none is a third-party defendant. Indeed, the Opposition does not advance this claim,  
15 other than to mention it.

16 Finally, Counterclaimants cannot seek attorney fees as special damages because they now  
17 argue in their opposition that they wish to clear a “cloud on title.” Like most of *Sandy Valley*, that  
18 exception has been substantially narrowed. Attorney fees incurred in removing spurious clouds  
19 from a title may qualify as special damages in an action for slander of title, or similar action.  
20 *Horgan*, 123 Nev. at 585. Such fees may be permissible in slander of title actions because “the  
21 defendant ... by intentional and calculated action leaves the plaintiff with only one course of action:  
22 that is, litigation.... Fairness requires the plaintiff to have some recourse against the intentional  
23 malicious acts of the defendant.” *Id.* *Pardee Homes* makes clear that this is not such a case, but is  
24 rather a contract dispute, where Nevada law does “not support an award of attorney fees as special  
25 damages where a plaintiff merely seeks to recover fees incurred for prosecuting a breach-of-

26  
27 <sup>16</sup> Again, Counterclaimants’ focus on the superficial similarity of the “defaulters list” in  
28 *Reno’s Riverside Hotel* is misplaced, as the cases are vastly different. This case does not involve  
labor law. Further, that 1970 case was even disapproved of by *Sandy Valley* and is not instructive  
here.

1 *contract action against a breaching defendant,”* and particularly where entitlement to fees is  
2 governed by the contract. 135 Nev. at 177.

3 Counterclaimants cannot recover attorneys’ fees as special damages because none of their  
4 claims plead special damages as Rule 9(g) requires. Attorneys’ fees as special damages must be  
5 pled as such in the complaint pursuant to NRCP 9(g). “The mention of attorney fees in a complaint’s  
6 general prayer for relief is insufficient to meet this requirement.” *Sandy Valley*, 117 Nev. at 955–  
7 57 (2001). Here, the contract-based counterclaims include only the identical, conclusory allegation  
8 that Counterclaimants have had to hire counsel and are entitled to reasonable attorneys’ fees. This  
9 is insufficient to recover special damages.

10 The Counterclaimants’ claim for attorneys’ fees as special damages should be dismissed as  
11 a matter of clear Nevada law because Nevada law does “not support an award of attorney fees as  
12 special damages” in a breach of contract action. *Pardee Homes*, 135 Nev. at 177.

13 **F. The Waivers of Consequential Damages Agreed to By Westland and the Credit**  
14 **Facility Entities Are Clear, Unambiguous and Enforceable.**

15 In the Motion, Movants established that the Loan Documents and the MCFA all contain  
16 clear and unambiguous waivers of consequential damages. Mot. 18-19. In opposition,  
17 Counterclaimants argue that this waiver was only intended to apply to damages relating to recovery  
18 of collateral or application of foreclosure proceeds, not all conduct related to the Loan Documents  
19 and MCFA. Counterclaimants cite no law for their argument and base it solely on the inclusion of  
20 the consequential damages’ waiver within the “Waiver of Marshaling” section of the Loan  
21 Documents and MCFA. That argument fails under applicable law and the terms of the Loan  
22 Documents and the MCFA.

23 In Nevada, “when a contract is clear on its face, it ‘will be construed from the written  
24 language and enforced as written.’ The court has no authority to alter the terms of an unambiguous  
25 contract.” *Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 776 (2005) (quoting *Ellison v.*  
26 *C.S.A.A.*, 106 Nev. 601, 603 (1990) and citing *Renshaw v. Renshaw*, 96 Nev. 541, 543 (1980)). A  
27 contractual limitation on consequential damages is no exception. *See* Restatement (Second) of  
28 Contracts § 351 (1981) (“When parties expressly exclude or limit consequential damages, the basic

principles of freedom of contract counsel that the agreed upon provision should be enforced.”); 24 Richard A. Lord, *Williston on Contracts* § 64:21 (4th ed. 2021 update) (“In determining the amount of consequential damages recoverable for breach of a contract, it is often necessary to consider any limitation of liability or liquidated damages provisions set forth in the contract in question, since contracting parties are generally allowed to limit their liability in the event of breach to the performance of certain prescribed acts, such as repairing or replacing any defective performance or parts, or to the payment of a specified sum. The effect of such provisions, if lawful, may be to exclude entirely any liability for consequential damages.”) (footnotes omitted). Counterclaimants concede these points of law by not responding. EDCR 2.20(e) (stating that a failure to file opposition is an admission that a motion is meritorious and consenting to granting the same); *Bates*, 100 Nev. at 681-82, 683 (treating a failure to respond to an argument on the appropriate interest rate under the contract as conceded).

As set out in the Motion, the relevant language says:

NONE OF LENDER OR ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR REPRESENTATIVES SHALL BE RESPONSIBLE TO BORROWER (a) FOR ANY ACT OR FAILURE TO ACT UNDER ANY POWER OF ATTORNEY OR OTHERWISE, EXCEPT IN RESPECT OF DAMAGES ATTRIBUTABLE SOLELY TO THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS FINALLY DETERMINED PURSUANT TO A FINAL, NONAPPEALABLE COURT ORDER BY A COURT OF COMPETENT JURISDICTION, OR (b) FOR ANY PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES.

Motion, Ex. 1 at 102 (emphasis added); *accord* Verified Compl. Exs. 1 (Village Square Multifamily Loan and Security Agreement), § 14.04, and 6 (Liberty Multifamily Loan and Security Agreement), § 14.04.

The inclusion of the clear and unambiguous waiver of indirect or consequential damages in the “Waiver of Marshaling” sections of the Loan Documents and the MCFA does not limit the clear language. On the contrary, the Loan Documents and the MCFA provide that: “The captions and headings of the sections of this Master Agreement and the Loan Documents are for convenience only and shall be disregarded in construing this Master Agreement and the Loan Documents.” Motion, Ex. 1, § 15.09(a) (emphasis added); *see also* Verified Compl. Ex. 1 (Village Square Multifamily Loan and Security Agreement), § 15.08(a) and Ex. 6 (Liberty Multifamily Loan and Security Agreement), § 15.08(a). Accordingly, the Original Defendants and the Credit Facility

1 Entities have contractually waived their only argument in the Opposition.

2 Under the plain language of the conspicuous waiver, Fannie Mae cannot be liable to the  
3 Original Defendants or the Credit Facility Entities for indirect or consequential damages. No part  
4 of this waiver limits it to the matters discussed elsewhere in Section 14.04. The discussion in clause  
5 (a) of “any act or failure to act under any power of attorney or otherwise” is not contrary to clause  
6 (b) and, because it is stated in the disjunctive, does not modify clause (b).

7 Accordingly, the Court should enforce the Original Defendants’ and the Credit Facility  
8 Entities’ clear and unambiguous waiver of indirect and consequential damages and dismiss any  
9 claim for the foregoing under the Loan Documents and the MCFA.

10 **G. Plaintiffs’ Improper, Pro Forma Request for Amendment Should Be Denied as Futile.**

11 Plaintiffs conclude the Opposition with a perfunctory, undeveloped request for leave to  
12 assert unspecified amendments. As set forth above, however, Counterclaimants cannot cure the  
13 lack of standing related to the contract-based claims asserted by Counterclaimants that are not  
14 parties to any contract with Fannie Mae. Nor are Counterclaimants able to amend the claims so as  
15 to avoid the MCFA’s forum selection clause—it expressly applies to “any controversy arising under  
16 or in relation to the Notes, the Security Documents (other than the Security Instruments), or any  
17 other Loan Document.” Mot. Ex. 1, § 15.01. Any claim, however it may be articulated, arising out  
18 of or relating to the MCFA is subject to that contractual term. Finally, there is no amendment that  
19 can alter the statutory and contractual provisions that preclude any claims here for punitive  
20 damages, consequential damages, and attorneys’ fees as a matter of law. Accordingly, any  
21 amendment by Counterclaimants would be futile. *See Allum v. Val. Bank of Nev.*, 109 Nev. 280,  
22 287 (1993) (affirming denial of leave to amend where amendment would be futile); *Halcrow, Inc.*  
23 *v. Eighth Jud. Dist. Ct.*, 129 Nev. 394, 402 (2013), *as corrected* (Aug. 14, 2013) (*reversing* grant  
24 of leave to amend misrepresentation claim because such would be futile).<sup>17</sup> Additionally,  
25 Counterclaimants’ request for leave to amend should be denied where they have not submitted a

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26 <sup>17</sup> In an attempt to avoid dismissal of the non-contracting parties, Counterclaimants request  
27 leave to “state appropriate business tort claims.” Opp. 9. However, they fail to state what tort  
28 claims they would allege or what parties would allege those claims. Further, such claims would  
almost certainly be dismissed as a matter of law. Accordingly, this request should also be denied  
as futile.



copy of any proposed revised pleading. *See* EDCR 2.30 (“A copy of a proposed amended pleading must be attached to any motion to amend the pleading.”).

### III. CONCLUSION

For the foregoing reasons, Fannie Mae and FHFA respectfully request that the Court grant their motion to dismiss the counterclaims as discussed in the Motion and above.

Dated: December 9, 2021

SNELL & WILMER L.L.P.

By: /s/ Nathan G. Kanute

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## EXHIBIT A

Counterclaim Number	Counterclaimants to Dismiss
1	Village Square, the Credit Facility Entities, the Securities Entities
2	Liberty Village, the Credit Facility Entities, the Securities Entities
3*	Liberty Village, Village Square, the Securities Entities
4*†	The Securities Entities
5†	The Credit Facility Entities and the Securities Entities
9†	The Credit Facility Entities and the Securities Entities
10†	The Credit Facility Entities and the Securities Entities

\* Counterclaims 3 and 4, as they relate to claims based on the MCFA, must be dismissed in their entirety based on the mandatory forum selection clause.

† Counterclaims 4, 5, 9, and 10 assert claims under the Loan Documents and the MCFA. The court can also dismiss the portions of those counterclaims to the extent they are asserted by parties who are not parties to the specific contract. For example, Liberty Village cannot assert any of the MCFA-related claims in counterclaim 4 because it is not a party to the MCFA.

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **PLAINTIFF AND FHFA'S REPLY IN SUPPORT OF MOTION TO DISMISS IN PART DEFENDANTS' FIRST AMENDED ANSWER AND AMENDED COUNTERCLAIM** by the method indicated:

\_\_\_\_\_ U. S. Mail  
\_\_\_\_\_ U.S. Certified Mail  
X \_\_\_\_\_ Electronic Service  
\_\_\_\_\_ E-mail

and addressed to the following:

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DATED: December 9, 2021

/s/ Lara J. Taylor

An Employee of Snell & Wilmer L.L.P.

4861-0216-1923.11



IT IS SO ORDERED.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 12/22/21

*Heather S. Hume*

CLERK OF THE COURT

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

FEDERAL NATIONAL MORTGAGE  
ASSOCIATION,

Plaintiff,

vs.

WESTLAND LIBERTY VILLAGE, LLC, and  
WESTLAND VILLAGE SQUARE, LLC,

Defendants.

AND ALL RELATED ACTIONS.

Case No. A-20-819412-B

Dept No. 13

**ORDER DENYING IN PART AND  
GRANTING IN PART MOTION TO  
DISMISS IN PART DEFENDANTS'  
FIRST AMENDED ANSWER AND  
AMENDED COUNTERCLAIM**

**Hearing Date: December 16, 2021**

**Hearing Time: 10:45 a.m.**

This matter came before the Court pursuant to the *Motion to Dismiss In Part Defendants' First Amended Answer and Amended Counterclaim* filed October 29, 2021 (the "Motion") by Plaintiff Federal National Mortgage Association ("Fannie Mae") and Intervenor Federal Housing Finance Agency ("FHFA", and collectively, "Movants"). Counterclaimants filed their opposition on November 23, 2021 (the "Opposition"). Movants filed their reply in support of the Motion on

1 December 9, 2021.

2 The Court heard oral argument on the Motion on December 16, 2021. After taking the  
3 Motion under advisement, the Court issued its Minute Order on December 22, 2021. This Order  
4 will replace the Minute Order as the final order of the Court. Based on the moving papers and the  
5 argument of counsel, and for good cause shown:

6 **IT IS HEREBY ORDERED** that the Motion is DENIED IN PART as a matter of law  
7 relative to Movants' venue contentions;

8 **IT IS FURTHER ORDERED** that the Motion is DENIED IN PART as a matter of law  
9 relative to Movants' contention that 12 U.S.C. § 4617(j)(4) protects Fannie Mae from liability for  
10 the punitive damages Counterclaimants seek;

11 **IT IS FURTHER ORDERED** that the Motion is DENIED IN PART regarding Movants'  
12 attorneys' fees contentions because the complexities and nuances involved in this case render  
13 disposition of these issues under NRCP 12(b)(5) to be inappropriate. This denial is without  
14 prejudice to further development of these issues pursuant to NRCP 56;

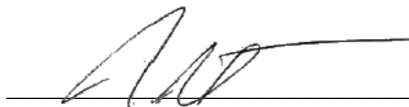
15 **IT IS FURTHER ORDERED** that the Motion is DENIED IN PART regarding Movants'  
16 contentions that certain Counterclaimants lack standing because the complexities, party  
17 affiliations/interrelationships, and nuances involved in this case render disposition under NRCP  
18 12(b)(5) to be inappropriate. This denial is without prejudice to further development of these issues  
19 pursuant to NRCP 56;

20 **IT IS FURTHER ORDERED** that the Motion is GRANTED IN PART under NRCP  
21 12(b)(5) regarding Movants' consequential damages contentions because the papers and documents  
22 properly before the Court establish that such damages cannot be claimed; and

23 **IT IS FURTHER ORDERED** that Movants shall answer Counterclaimants' First  
24 Amended Counterclaim on or before 14 days after the filing of a notice of entry of this Order.

Dated this 17th day of March, 2022

25 **IT IS SO ORDERED.**

26 

27 DISTRICT COURT JUDGE  
28 51A BA7 5E06 15C8 ABG  
Mark R. Denton  
District Court Judge

Respectfully submitted by:

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/s/Nathan G. Kanute

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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Federal National Mortgage  
7 Association, Plaintiff(s)

CASE NO: A-20-819412-B

8 vs.

DEPT. NO. Department 13

9 Westland Liberty Village, LLC,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Order was served via the court's electronic eFile system to all  
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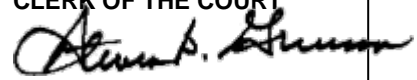
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*Attorneys for Plaintiff Federal National  
Mortgage Association*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

FEDERAL NATIONAL MORTGAGE  
ASSOCIATION,

Plaintiff,

vs.

WESTLAND LIBERTY VILLAGE, LLC, and  
WESTLAND VILLAGE SQUARE, LLC,

Defendants.

AND ALL RELATED ACTIONS.

Case No. A-20-819412-B

Dept No. 13

**NOTICE OF ENTRY OF ORDER  
DENYING IN PART AND GRANTING  
IN PART DEFENDANTS' FIRST  
AMENDED ANSWER AND AMENDED  
COUNTERCLAIM**

PLEASE TAKE NOTICE that an Order Denying in Part and Granting in Part Defendants' First Amended Answer and Amended Counterclaim was entered in the above-captioned matter on March 17, 2022, a copy of which is attached hereto.

Dated: March 17, 2022.

SNELL & WILMER L.L.P.

By: /s/ Kelly H. Dove

Jeffrey Willis, Esq. (NV Bar No. 4797)  
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Nathan G. Kanute, Esq. (NV Bar No. 12413)  
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*Attorneys for Plaintiff Federal National  
Mortgage Association*

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING IN PART AND GRANTING IN PART DEFENDANTS' FIRST AMENDED ANSWER AND AMENDED COUNTERCLAIM** by method indicated below:

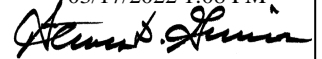
- ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
- ☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.
- ☐ **BY PERSONAL DELIVERY:** by causing personal delivery by \_\_\_\_\_, a messenger service with which this firm maintains an account, of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ **BY EMAIL:** by emailing a PDF of the document listed above to the email addresses of the individual(s) listed below.
- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

DATED March 17, 2022.

/s/ Maricris Williams

An employee of SNELL & WILMER L.L.P.

4875-0386-6902



CLERK OF THE COURT

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

FEDERAL NATIONAL MORTGAGE  
ASSOCIATION,

Plaintiff,

vs.

WESTLAND LIBERTY VILLAGE, LLC, and  
WESTLAND VILLAGE SQUARE, LLC,

Defendants.

AND ALL RELATED ACTIONS.

Case No. A-20-819412-B

Dept No. 13

**ORDER DENYING IN PART AND  
GRANTING IN PART MOTION TO  
DISMISS IN PART DEFENDANTS'  
FIRST AMENDED ANSWER AND  
AMENDED COUNTERCLAIM**

**Hearing Date: December 16, 2021**

**Hearing Time: 10:45 a.m.**

This matter came before the Court pursuant to the *Motion to Dismiss In Part Defendants' First Amended Answer and Amended Counterclaim* filed October 29, 2021 (the "Motion") by Plaintiff Federal National Mortgage Association ("Fannie Mae") and Intervenor Federal Housing Finance Agency ("FHFA", and collectively, "Movants"). Counterclaimants filed their opposition on November 23, 2021 (the "Opposition"). Movants filed their reply in support of the Motion on

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1 December 9, 2021.

2 The Court heard oral argument on the Motion on December 16, 2021. After taking the  
3 Motion under advisement, the Court issued its Minute Order on December 22, 2021. This Order  
4 will replace the Minute Order as the final order of the Court. Based on the moving papers and the  
5 argument of counsel, and for good cause shown:

6 **IT IS HEREBY ORDERED** that the Motion is DENIED IN PART as a matter of law  
7 relative to Movants' venue contentions;

8 **IT IS FURTHER ORDERED** that the Motion is DENIED IN PART as a matter of law  
9 relative to Movants' contention that 12 U.S.C. § 4617(j)(4) protects Fannie Mae from liability for  
10 the punitive damages Counterclaimants seek;

11 **IT IS FURTHER ORDERED** that the Motion is DENIED IN PART regarding Movants'  
12 attorneys' fees contentions because the complexities and nuances involved in this case render  
13 disposition of these issues under NRCP 12(b)(5) to be inappropriate. This denial is without  
14 prejudice to further development of these issues pursuant to NRCP 56;

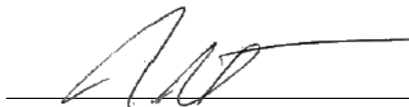
15 **IT IS FURTHER ORDERED** that the Motion is DENIED IN PART regarding Movants'  
16 contentions that certain Counterclaimants lack standing because the complexities, party  
17 affiliations/interrelationships, and nuances involved in this case render disposition under NRCP  
18 12(b)(5) to be inappropriate. This denial is without prejudice to further development of these issues  
19 pursuant to NRCP 56;

20 **IT IS FURTHER ORDERED** that the Motion is GRANTED IN PART under NRCP  
21 12(b)(5) regarding Movants' consequential damages contentions because the papers and documents  
22 properly before the Court establish that such damages cannot be claimed; and

23 **IT IS FURTHER ORDERED** that Movants shall answer Counterclaimants' First  
24 Amended Counterclaim on or before 14 days after the filing of a notice of entry of this Order.

Dated this 17th day of March, 2022

25 **IT IS SO ORDERED.**

26 

27 DISTRICT COURT JUDGE  
28 51A BA7 5E06 15C8 ABG  
Mark R. Denton  
District Court Judge



Respectfully submitted by:

SNELL & WILMER L.L.P.

/s/Nathan G. Kanute

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Mortgage Association*

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Federal National Mortgage  
7 Association, Plaintiff(s)

CASE NO: A-20-819412-B

8 vs.

DEPT. NO. Department 13

9 Westland Liberty Village, LLC,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Order was served via the court's electronic eFile system to all  
recipients registered for e-Service on the above entitled case as listed below:

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## **CERTIFICATE OF SERVICE**

I certify that on April 15, 2022, a true and correct copy of PETITIONERS FEDERAL HOUSING FINANCE AGENCY AND FEDERAL NATIONAL MORTGAGE ASSOCIATION'S APPENDIX – VOLUME III OF III, was transmitted electronically through the Court's e-filing system to the attorney(s) associated with this case.

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<p>Donald H. Williams, Esq. Drew Starbuck, Esq. Williams Starbuck 612 South Tenth Street Las Vegas, NV 89101</p> <p><i>Attorneys for Counterdefendants MMM Investments, LLC; ND Manager, LLC; Shamrock Communities, LLC; Shamrock Properties VI; Shamrock Properties VII; Shamrock Property Management, LLC; Ellen Weinstien; Jennifer Wilde; and Hillary Davidson</i></p>	
--	--

/s/ Debbie Sorensen  
An Employee of Fennemore Craig, P.C.